IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1096 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NATVARJI @ NATU CHHAGANJI - Appellant(s)
Versus
STATE OF GUJARAT & 1 - Opponent(s)

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Appearance :
THROUGH JAIL for Appellant(s) : 1,MR G RAMAKRISHNAN for Appellant(s) : 1,
MR KP RAVAL APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

and

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 12/02/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE BANKIM.N.MEHTA)

1. The appellant has preferred this appeal under section 374 (2) of Criminal Procedure Code, 1973 and challenge the judgment and order of conviction dated 21st August, 1998 rendered by City Sessions Court, Ahmedabad in Sessions Case No.27/98 convicting and sentencing the appellant for the offences punishable under section 302 of I.P.Code and 135 of Bombay Police Act and sentencing him to undergo imprisonment for life and to pay a fine of Rs.1,000/- in default thereof to undergo rigorous imprisonment for three months for the offence punishable under section 302 and to undergo simple imprisonment for one month for the offence punishable section 135(1) of Bombay Police Act. The Trial Judge also ordered that both the sentences shall run concurrently.

2. In brief, the prosecution case was that complainant Ramiben S.Thakore was doing miscellaneous work at Jumani market in Revdi Bazar in Kalupur Darwaja at Ahmedabad. The appellant was doing labour work at a shop near Kalupur Darwaja, Opposite Jumani Market in Revadi Bazar area of Ahmedabad. Deceased Rafik Sheikh was a loading rickshaw driver and was

driving Ramiben's auto rickshaw and the appellant was also having an auto rickshaw and, therefore, she knew both of them. On the morning of 30th September, 1997 the complainant with her daughter Varjuben went for labour work at Jumani Market and deceased Rafik also came there for labour work with loading rickshaw. At that time the appellant came to the complainant and told her that he would kill Rafik, the complainant and her daughter. Therefore Ramiben asked him as to why he wanted to kill them. The appellant informed her that he has learnt about illicit relation of Rafik with his wife Madhu and that the complainant and her daughter were assisting them. As Rafik Sheikh had gone for business with loading autorickshaw and as the appellant was moving around, the complainant informed Pratap the brother of the appellant who came there. So, Pratap informed the complainant to come to his house and to call mother of Rafik to persuade him and, therefore, Varju, the daughter of complainant was sent to call the mother of Rafik; who came to the market with mother of Rafik and Mehrunnisa, the maternal aunt of Rafik. Thereafter the complainant, the mother of Rafik, his

maternal Aunt and Pratap started to go to Pratap's house. When they reached near Kalupur Darwaja, Pratap went inside a lane and called the complainant inside the lane but she did not go as she was afraid. The complainant, Mehrunnisa and the mother of Rafik ran towards Jumani Market but when they reached near the corner of Khajuri gali they saw the appellant, his brother-Pratap and two others were beating Rafik. The appellant inflicted a gupti blow on the left side of Rafik. As Rafik was bleeding, his mother and maternal Aunt Mehrunnisa took him to the hospital for treatment. Rafik succumbed to his injuries in the hospital.

3. On the basis of complaint filed by Ramiben offence was registered as First C.R.No.257/97 by Kalupur Police Station, Ahmedabad and investigation was started. The dead body of Rafik was sent for postmortem. Panchnama of scene of offence, discovery of muddamal weapon and inquest panchnama were drawn. The statement of witnesses were recorded. The accused was arrested. On completion of investigation charge sheet was laid before Metropolitan

Magistrate's Court, Ahmedabad for the offence punishable under Section 302 of I.P.Code and Section 135 of Bombay Police Act. As the offence was triable exclusively by the Sessions Court, the case was committed to the City Sessions Court, Ahmedabad and it was registered as Sessions Case No.27/98. Learned City Sessions Judge, Ahmedabad framed charge Exh.2 for the offence punishable under Section 302 of I.P.Code and 135(1) of Bombay Police Act against the accused. The charge was read over and explained to the accused who pleaded not guilty to the charge and claimed to be tried. Therefore, the prosecution adduced evidence to prove the charge levelled against the accused. On completion of recording of evidence the incriminating evidence appearing against the accused was explained to him. The accused in his further statement recorded under Section 313 of Criminal Procedure Code explained the incriminating evidence by stating that the deceased had assaulted him with gupti and, therefore, he tried to save himself from the attack. During that process the deceased died on account of injury by his own gupti. It is further stated that witness Ramiben had given

money to Rafik and there was a quarrel between Ramiben and Rafik that false case is filed against him. After hearing learned APP and learned advocate for the accused, the trial Court found that the prosecution has proved the charge beyond reasonable doubt and, therefore, convicted the accused and sentenced him as mentioned hereinabove. Being aggrieved and dis-satisfied by the judgment and order of conviction the accused has preferred the present appeal.

4. We have heard learned advocate for the appellant and learned APP for the respondent-State. We have also perused the impugned judgment and record and proceedings of the case.

5. Learned advocate Mr.Ramakrishnan appearing for the appellant has stated at the bar that he does not dispute that the death of Rafik was homicidal in nature and that the appellant was involved in the incident but submitted that the deceased died on account of the injury caused by gupti which he was holding and, therefore, could not have been convicted

and in the alternative the appellant could not have been convicted for the offence of murder as the incident occurred on account of sudden quarrel between the appellant and deceased Rafik. He also submitted that there was no intention on the part of the appellant to cause death as only one injury was caused to the deceased. He also submitted that on account of sudden provocation the appellant caused the injury without pre-meditation and, therefore, the case of the appellant would fall under Exception 1 and 4 to Section 300 and the conviction of the appellant is required to be converted into offence punishable under section 304 Part I of I.P.Code.

6. Learned APP Mr.Raval submitted that the evidence on record clearly indicates that the appellant had before the incident moved around with gupti and was searching the deceased. There is no evidence with regard to sudden quarrel therefore, it cannot be said that on account of provocation the appellant while deprived of the power of self-control caused the injury. He also submitted that the injury was caused on vital part of the deceased and looking to

the injury it cannot be said that the appellant had no intention to cause death of the deceased. Therefore, the case of the appellant would not fall under Exception 1 and 4 to Section 300 of I.P.Code and, therefore, the appeal requires to be dismissed.

7. As conceded by the learned advocate for the appellant this Court is not required to go into the evidence with regard to the nature of death of Rafik. The prosecution examined P.W.No.7 Dr.Hasumati Patel, who performed the postmortem of dead body of Rafik at Exh.18. The prosecution also produced postmortem report at Exh.19 which indicates the injuries found on the dead body. It also indicates that the cause of death was shock and hemorrhage as a result of injury sustained. In view of this evidence the prosecution proved beyond reasonable doubt that death of Rafik was homicidal in nature. In view of the fact that the appellant has not disputed that the death of Rafik was homicidal in nature no further discussion on this point is required.

8. In view of the fact that the appellant has

admitted the incident and his involvement in the incident, the only question required to be examined by this Court is whether the deceased died on account of the injury caused by himself and if not whether the case would fall under Exception 1 or 4 to Section 300 of I.P.Code as submitted by learned advocate for the appellant.

9. In light of this submissions, the appellant has made contradictory defences.

10. In order to prove that the culpable homicide is not murder the accused is required to demonstrate that while deprived of power of self-control by grave and sudden provocation he caused death of the person who gave provocation. The accused is also required to prove that the offence was committed without pre-meditation, in a sudden fight in the heat of passion upon a sudden quarrel and without having taken undue advantage or has not acted in a cruel or un-usual manner. In the instant case according to the prosecution case the appellant was harbouring a belief that deceased Rafik had illicit relation with

his wife and, therefore, on the day of incident since morning he was moving with gupti in search of the deceased. P.W.No.2 Ramiben Exh.9 has also deposed that the appellant came to her in the morning and gave threats to kill Rafik, herself and her daughter Varju and, therefore, her daughter Varju was sent to call mother of Rafik. She has also stated that the appellant after the incident went to the police station after throwing the gupti. The deposition of this witness also indicates that there was no quarrel between deceased Rafik and the appellant. The evidence does not indicate that there was any quarrel between the deceased and the appellant and that the deceased gave grave and sudden provocation to the appellant and there was a fight between them. There is no evidence to indicate that in sudden fight in heat of passion while deprived of power of self-control the appellant inflicted the injury.

11. The prosecution also examined P.W.No.4 Mehrunnisa Exh.14 who has deposed that Varju had come to her house to call her and told her that the appellant was in search of the deceased to kill him

and when she went at the place of incident she saw that the appellant, after quarrel with Rafik was telling PW No.2 Ramiben to go in the lane but she did not go but when they proceeded, the appellant inflicted gupti blow to Rafik. The evidence does not indicate that there was sudden fight or quarrel between the appellant and deceased Rafik. Therefore, there was no grave and sudden provocation which deprived the appellant of power of self-control and in heat of passion the appellant inflicted the injury.

12. The prosecution also examined P.W.No.5 Banubibi Exh.5 the mother of Rafik who has deposed that Varju had come to call her and was informed that appellant is moving with a knife to kill them. The evidence indicates that she went to the place of incident and noticed that the appellant came running with the gupti and inflicted injury to the deceased. In the cross-examination the appellant was asked as to how he held the gupti, which the appellant demonstrated in the Court. This cross examination indicates that it was the appellant and not Rafik who was holding

the weapon. The evidence does not indicate that there was quarrel between the appellant and the deceased and on account of grave and sudden provocation the appellant inflicted the fatal injury. It is to be recorded that the witness has not been cross-examined with regard to the fact that the appellant was moving with gupti since morning in search of the deceased and with regards to threats he gave to kill deceased Rafik. The appellant has in the further statement raised a plea that the deceased was killed by his own gupti. However, the witness has not been cross-examined to prove the defence that deceased Rafik was holding gupti and was killed by his own gupti. Except the further statement this defence has not been put to any of the witnesses. Therefore, in our view the appellant has not been able to demonstrate that on account of grave and sudden provocation in a sudden fight the appellant was deprived of his self-control and inflicted the injury to the deceased which resulted into his death. The appellant has also not been able to demonstrate that deceased Rafik was holding a gupti and had died on account of injuries sustained by his own gupti.

13. In view of the above evidence looking to the fact that the appellant was moving with gupti since morning to kill Rafik and gave threats to the witnesses, in our view it cannot be said that there was no intention on the part of the appellant to cause death of Rafik. In view of this the submission made by the learned advocate for the appellant that the case would fall under Exception 1 and 4 to Section 300 cannot be accepted. Looking to the evidence the appellant inflicted the injury to deceased Rafik with an intention of causing such bodily injury knowing fully well that such injury is likely to cause death of Rafik. Therefore, in our view the injury caused to Rafik by which the death is caused is done with the intention of causing his death. Therefore, it would fall under Section 300 of I.P.Code.

14. Therefore, the learned Trial Judge was justified in recording conviction of the appellant under Section 302 of I.P.Code.

15. As regards conviction under Section 135 (1) of B.P.Act, the prosecution produced notification issued under Section 37 of B.P.Act, 1951 at Exh.13. It covers the period between 1.9.97 to 31.10.97. The incident occurred on 30th September, 1997. Therefore, on the day of incident the prohibitory order with respect to weapon used in the offence was in force. Therefore, the learned Trial Judge was justified in recording conviction of the appellant under Section 135 (1) of B.P.Act.

16. In view of above the appeal fails, hence the same is dismissed. Judgment and order of conviction rendered by learned Additional Sessions Judge, Ahmedabad City in Sessions Case No.27/98 rendered on 21st August, 1998 is confirmed.

(A.L.Dave, J.)

(Bankim N.Mehta, J.)

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